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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,725	08/04/2003	Lucky W. Besecker	BRB-10002/02	5605
25006	7590	07/12/2004	EXAMINER	
GIFFORD, KRASS, GROH, SPRINKLE ANDERSON & CITKOWSKI, PC 280 N OLD WOODARD AVE SUITE 400 BIRMINGHAM, MI 48009			BASINGER, SHERMAN D	
		ART UNIT		PAPER NUMBER
		3617		
DATE MAILED: 07/12/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	X
	10/633,725	BESECKER ET AL.	
	Examiner	Art Unit	
	Sherman D. Basinger	3617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is **FINAL**.                                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1,2,4-6,8 and 10 is/are rejected.
- 7) Claim(s) 3,7 and 9 is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 14 August 2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 4-6 and 8-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 4 "said flange portions" has no clear antecedent. It appears that claim 4 should depend from claim 3 as opposed to claim 1.

In claim 5 "to said guide means to said platform" is unclear.

In claim 8 "the forward wall formed by said moveable member" has no clear antecedent.

In claim 10 "said guide structures" has no clear antecedent.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 2, 5, 6 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blackmore in view of Stone.

Blackmore discloses a moveable member with side structures 30 and 31 and a generally horizontal swim platform (see column 3, lines 25-30) supported at the lower end of the side structures 30 and 31 when positioned as is shown in figure 2, a mounting structure 20, a first pair of parallel spaced guide means 21 and 22 on the mounting structure 20, a second pair of parallel spaced guide means 90 and 91 on the movable member and being complementary to and engage able with the first guide means to support the moveable member for vertical sliding movement between a storage position in which the platform is above water level (see figure 1) when the boat is floating in water and a lower position in which the platform is submerged (see figure 2), and an hydraulic actuator 40 acting between the mounting structure and the movable member for moving the movable member between the storage and lower positions through cables 82 and 83.

Blackmore does not disclose control means for actuating the hydraulic actuator means accessible to an operator standing on the platform.

Note lines 37-39 of column 1 of Stone. In view of the remote control device of Stone, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains to provide to Blackmore remote control means which would allow for actuating the hydraulic actuator means by an operator standing on the platform. Motivation to do so is to make it convenient for a swimmer using the swim platform of Blackmore to raise and lower it when swimming. The hydraulic actuator of Blackmore is double acting.

The forward wall of claim 5 is either of posts 16 of Blackmore. Both post 16 are such that the hydraulic actuator means is forward of them.

Due to the design of members 30 and 31, each of which is a guide structure, each forms hand gripping surfaces for use by a user standing on the platform if the user grasp either of members 30 and 31.

***Allowable Subject Matter***

5. Claims 3, 7 and 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
6. Claims 4 and 8 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hovey is cited to show the boat ladder raised and lowered by a hydraulic actuator. Schmidt, Jr. is cited to show mounting apparatus for a lift assembly.
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sherman D. Basinger whose telephone number is 703-308-1139. The examiner can normally be reached on M-F (6:00-2:30 ET).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samuel J. Morano can be reached on 703-308-0230. The fax phone

number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Sherman D. Basinger  
Primary Examiner  
Art Unit 3617 

sdb  
6/25/04